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9 BANKERS STANDARD INSURANCE  
10 COMPANY

11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 JACK D. HARRISON and NAOMA  
14 HARRISON,

15 Plaintiffs,

16 vs.

17 BANKERS STANDARD INSURANCE  
18 COMPANY, ACE PROPERTY AND  
19 CASUALTY INSURANCE COMPANY,  
20 AMERICAN FAMILY MUTUAL  
21 INSURANCE COMPANY and BBVA  
22 COMPASS INSURANCE AGENCY,  
23 INC.; and DOES 1 through 50,

24 Defendants.

Case No. 13CV1682 DMS JMA

**DEFENDANT BANKERS  
STANDARD INSURANCE CO.'S  
ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFFS'  
FIRST AMENDED COMPLAINT**

***JURY TRIAL DEMANDED***

***Judge Dana M. Sabraw***

25 Defendant Bankers Standard Insurance Company ("Bankers Standard" and/or  
26 "Defendant") hereby responds to Plaintiffs' First Amended Complaint (hereafter the  
27 "Complaint") as follows:

28 **PARTIES AND JURISDICTION**

1. Responding to Paragraph 1 of the Complaint, Defendant is without  
sufficient knowledge or information to form a belief as to the truth of the allegations  
contained in said paragraph, and on that basis denies each and every allegation  
contained therein.

1           2.     Responding to Paragraph 2 of the Complaint, Defendant admits the  
2 allegations.

3           3.     Responding to Paragraph 3 of the Complaint, Defendant is without  
4 sufficient knowledge or information to form a belief as to the truth of the allegations  
5 contained in said paragraph, and on that basis denies each and every allegation  
6 contained therein.

7           4.     Responding to Paragraph 4 of the Complaint, Defendant is without  
8 sufficient knowledge or information to form a belief as to the truth of the allegations  
9 contained in said paragraph, and on that basis denies each and every allegation  
10 contained therein.

11          5.     Responding to Paragraph 5 of the Complaint, Defendant is without  
12 sufficient knowledge or information to form a belief as to the truth of the allegations  
13 contained in said paragraph, and on that basis denies each and every allegation  
14 contained therein.

15          6.     Responding to Paragraph 6 of the Complaint, Defendant is without  
16 sufficient knowledge or information to form a belief as to the truth of the allegations  
17 contained in said paragraph, and on that basis denies each and every allegation  
18 contained therein.

19          7.     Admitted.

20          8.     Admitted.

21                               **GENERAL ALLEGATIONS**

22          9.     Responding to Paragraph 9 of the Complaint, Defendant is without  
23 sufficient knowledge or information to form a belief as to the truth of the allegations  
24 contained in said paragraph, and on that basis denies each and every allegation  
25 contained therein.

26          10.    Responding to Paragraph 10 of the Complaint, Defendant is without  
27 sufficient knowledge or information to form a belief as to the truth of the allegations  
28

1 contained in said paragraph, and on that basis denies each and every allegation  
2 contained therein.

3 11. Admitted.

4 12. Responding to Paragraph 12 of the Complaint, denied as stated. The  
5 coverage provided is subject to all terms, conditions and provisions of the insurance  
6 contract alleged by Plaintiffs.

7 13. Responding to Paragraph 13 of the Complaint, Defendant is without  
8 sufficient knowledge or information to form a belief as to the truth of the allegations  
9 contained in said paragraph, and on that basis denies each and every allegation  
10 contained therein.

11 14. Responding to Paragraph 14 of the Complaint, Defendant is without  
12 sufficient knowledge or information to form a belief as to the truth of the allegations  
13 contained in said paragraph, and on that basis denies each and every allegation  
14 contained therein.

15 15. Responding to Paragraph 15 of the Complaint, Defendant asserts that  
16 Plaintiffs represented to Bankers Standard that on or about July 29, 2011, the  
17 Plaintiffs had rented a truck to move their personal belongings from Colorado to  
18 California with their personal vehicle being towed on a trailer. Defendant is without  
19 sufficient knowledge or information to form a belief as to the truth of the remaining  
20 allegations contained in said paragraph, and on that basis denies each and every  
21 allegation contained therein.

22 16. Responding to Paragraph 16 of the Complaint, Defendant asserts that  
23 Plaintiffs represented to Bankers Standard that Plaintiffs stopped overnight in New  
24 Mexico on the way to California where the truck with their belongings in it and car  
25 was stolen and reported to the police. Defendant is without sufficient knowledge or  
26 information to form a belief as to the truth of the remaining allegations contained in  
27 said paragraph, and on that basis denies each and every allegation contained therein.  
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1           17. It is admitted that a proof of loss was submitted. The balance of  
2 Plaintiffs' allegations are denied.

3           18. Admitted.

4           19. Responding to Paragraph 19 of the Complaint, Defendant denies each  
5 and every allegation contained therein.

6           20. Responding to Paragraph 20 of the Complaint, it is admitted that  
7 Defendant made payment in connection with Plaintiffs' claim. The balance of the  
8 allegations are denied.

9           21. Responding to Paragraph 21 of the Complaint, it is admitted that  
10 Plaintiffs made monetary demands. Defendant denies Plaintiffs' characterization of  
11 those demands.

12           22. Responding to Paragraph 22 of the Complaint, Defendant denies each  
13 and every allegation contained therein.

14                   **SPECIFIC FACTS AS TO BANKERS/BBVA ("Bankers")**

15           23. Responding to Paragraph 23 of the Complaint, Defendant is without  
16 sufficient knowledge or information to form a belief as to the truth of the allegations  
17 contained in said paragraph, and on that basis denies each and every allegation  
18 contained therein. It is denied that Defendants should be characterized as the same  
19 entity.

20           24. Responding to Paragraph 24 of the Complaint, Defendant is without  
21 sufficient knowledge or information to form a belief as to the truth of the allegations  
22 contained in said paragraph, and on that basis denies each and every allegation  
23 contained therein. It is denied that Defendants should be characterized as the same  
24 entity.

25           25. Responding to Paragraph 25 of the Complaint, Defendant is without  
26 sufficient knowledge or information to form a belief as to the truth of the remaining  
27 allegations contained in said paragraph, and on that basis denies each and every  
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1 allegation contained therein. It is denied that Defendants should be characterized as  
2 the same entity.

3         26. Responding to Paragraph 26 of the Complaint, Defendant asserts that  
4 Bankers Standard paid Plaintiffs. Defendant denies the remaining allegations  
5 contained in said paragraph. It is denied that Defendants should be characterized as  
6 the same entity.

7         27. Responding to Paragraph 27 of the Complaint, it is admitted that by letter  
8 dated June 19, 2012 from the adjuster for Bankers Standard, Plaintiffs were advised  
9 that under the terms of the Bankers Standard homeowner's policy, they were limited to  
10 recovery of ten percent (10%) of the highest personal property limit which was  
11 calculated to be \$266,000 (i.e., 10% of \$2,660,000). The ten percent limitation was  
12 due to the fact that the claimed personal property had been located at the Plaintiffs'  
13 Colorado home and never had been located at the 18519 Calle La Serra, Rancho Santa  
14 Fe, California 92091-0155 location, which was listed as the sole covered location in  
15 the Bankers Standard homeowner's policy. The balance of Plaintiffs'  
16 characterizations are denied.

17         28. Responding to Paragraph 28 of the Complaint, Defendant is without  
18 sufficient knowledge or information to form a belief as to the truth of the allegations  
19 contained in said paragraph, and on that basis denies each and every allegation  
20 contained therein. It is denied that Defendants should be characterized as the same  
21 entity.

22         29. Responding to Paragraph 29 of the Complaint, Defendant asserts that the  
23 Bankers Standard policies are written contracts the terms of which speak for  
24 themselves and denies Plaintiffs' characterization. It is denied that Defendants should  
25 be characterized as the same entity.

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1           30.    Responding to Paragraph 30 of the Complaint, Defendant denies  
2 Plaintiffs' allegations. It is denied that Defendants should be characterized as the  
3 same entity.

4           31.    Responding to Paragraph 31 of the Complaint, Defendant is without  
5 sufficient knowledge or information to form a belief as to the truth of the allegations  
6 contained in said paragraph, and on that basis denies each and every allegation  
7 contained therein. It is denied that Defendants should be characterized as the same  
8 entity.

9           32.    Responding to Paragraph 32, Defendant denies each and every allegation  
10 contained therein. It is denied that Defendants should be characterized as the same  
11 entity.

12           33.    Responding to Paragraph 33 of the Complaint, Defendant is without  
13 sufficient knowledge or information to form a belief as to the truth of the allegations  
14 contained in said paragraph, and on that basis denies each and every allegation  
15 contained therein. It is denied that Defendants should be characterized as the same  
16 entity.

17           34.    Responding to Paragraph 34 of the Complaint, Defendant is without  
18 sufficient knowledge or information to form a belief as to the truth of the remaining  
19 allegations contained in said paragraph, and on that basis denies each and every  
20 allegation contained therein. It is denied that Defendants should be characterized as  
21 the same entity.

22           35.    Responding to Paragraph 35 of the Complaint, Defendant admits that it  
23 made payment to Plaintiffs under the terms of the policies. The balance of Plaintiffs'  
24 characterizations are denied. It is denied that Defendants should be characterized as  
25 the same entity.

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1           36.    Responding to Paragraph 36 of the Complaint, Defendant denies each  
2 and every allegation contained therein. It is denied that Defendants should be  
3 characterized as the same entity.

4           37.    Responding to Paragraph 37 of the Complaint, Defendant admits that  
5 Plaintiffs' counsel advised Bankers Standard that Plaintiffs calculated their total claim  
6 in the amount of \$722,456.49. It is denied that an additional sum of \$455,953.47 was  
7 due from Bankers Standard. It is denied that Defendants should be characterized as  
8 the same entity. The balance of the allegations are also denied.

9           38.    Admitted.

10          39.    Responding to Paragraph 39 of the Complaint, Defendant is without  
11 sufficient knowledge or information to form a belief as to the truth of the remaining  
12 allegations contained in said paragraph, and on that basis denies each and every  
13 allegation contained therein. It is denied that Defendants should be characterized as  
14 the same entity.

15          40.    Responding to Paragraph 40 of the Complaint, Defendant is without  
16 sufficient knowledge or information to form a belief as to the truth of the allegations  
17 contained in said paragraph, and on that basis denies each and every allegation  
18 contained therein. It is denied that Defendants should be characterized as the same  
19 entity.

20          41.    Responding to Paragraph 41 of the Complaint, Defendant is without  
21 sufficient knowledge or information to form a belief as to the truth of the allegations  
22 contained in said paragraph, and on that basis denies each and every allegation  
23 contained therein. It is denied that Defendants should be characterized as the same  
24 entity.

25          42.    Responding to Paragraph 42 of the Complaint, the letter from Plaintiffs'  
26 counsel is admitted. Plaintiffs' characterization of this writing is denied. It is denied  
27 that Defendants should be characterized as the same entity.

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44. Responding to Paragraph 44 of the Complaint, Defendant denies each and every allegation contained therein.

46. Responding to Paragraph 46 of the Complaint, Defendant denies each and every allegation contained therein.

47. Responding to Paragraph 47 of the Complaint, Defendant incorporates by reference all of the responses above.

49. Responding to Paragraph 49 of the Complaint, Defendant denies each and every allegation contained therein.

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1           51.    Responding to Paragraph 51 of the Complaint, in regard to Bankers  
2 Standard, Defendant denies each and every allegation contained therein.

3           52.    Responding to Paragraph 52 of the Complaint, Defendant denies each  
4 and every allegation contained therein.

5  
6                                   **THIRD CAUSE OF ACTION**  
7                   **(For Violations of California Unfair Insurance Practices**  
8                                   **Act B&P Code § 17200 Against Bankers)**

9           53.    Responding to Paragraph 53 of the Complaint, Defendant incorporates by  
10 reference all of the responses above.

11           54.    Responding to Paragraph 54 of the Complaint, Defendant is without  
12 sufficient knowledge or information to form a belief as to the truth of the allegations  
13 contained in said paragraph, and on that basis denies each and every allegation  
14 contained therein.

15           55.    Responding to Paragraph 55 of the Complaint, Defendant denies  
16 Plaintiffs' allegation.

17           56.    Responding to Paragraph 56 of the Complaint, Defendant is without  
18 sufficient knowledge or information to form a belief as to the truth of the allegations  
19 contained in said paragraph, and on that basis denies each and every allegation  
20 contained therein.

21           57.    Responding to Paragraph 57 of the Complaint, in regard to Bankers  
22 Standard, Defendant denies each and every allegation contained therein.

23           58.    Responding to Paragraph 58 of the Complaint, in regard to Bankers  
24 Standard, Defendant denies each and every allegation contained therein.

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1 **FOURTH CAUSE OF ACTION**

2 **(Breach of the Implied Covenant of Good Faith and Fair Dealing**  
3 **Against All Defendants - First Party Claim)**

4 59. Responding to Paragraph 59 of the Complaint, Defendant incorporates by  
5 reference all of the responses above.

6 60. Responding to Paragraph 60 of the Complaint, Defendant is without  
7 sufficient knowledge or information to form a belief as to the truth of the allegations  
8 contained in said paragraph, and on that basis denies each and every allegation  
9 contained therein.

10 61. Responding to Paragraph 61 of the Complaint, in regard to Bankers  
11 Standard, Defendant denies each and every allegation contained therein.

12 62. Responding to Paragraph 62 of the Complaint, Defendant denies each  
13 and every allegation contained therein.

14 **AFFIRMATIVE DEFENSES**

15 **FIRST AFFIRMATIVE DEFENSE**

16 63. The Complaint fails to state a claim upon which relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 64. The Bankers Standard insurance policies are contracts, the terms of  
19 which, subject to all provisions of the documents, including limitations, exclusions  
20 and endorsements which speak for themselves and all of which are incorporated by  
21 reference herein.

22 **THIRD AFFIRMATIVE DEFENSE**

23 65. In response to Plaintiffs' loss and Plaintiffs' claims, Bankers Standard has  
24 paid to Plaintiffs, or on Plaintiffs' behalf, what is due to Plaintiffs under the terms of  
25 the Bankers Standard insurance policies.

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66. The Bankers Standard homeowner's policy issued to Plaintiffs provides  
:

### 3. Personal Property

**a.** We cover personal property owned or used by an *insured person* while it is anywhere in the world...

**b. Special Limits of Insurance**

The special limit for each category shown below is the total limit for each loss for all property in that category. These special limits do not increase the Personal Property limit. . .

## (12) Personal Property At Other Residences

\$10,000 or;

(a) 10% of the highest Personal Property limit for a dwelling; or

**(b)** 15% of the highest Personal property limit for a condominium, cooperative unit or apartment;

whichever is greater, for direct physical loss to covered personal property usually located at an *insured person's* residence that is not the *residence premises*. The loss must be a loss covered by this policy.

This special limit does not apply to personal property moved or being moved from the *residence premises* to a residence you newly acquire during the *policy period* within the first 60 days after moving the property there.

67. Additionally, the Bankers Standard homeowner's policy provides the following definition:

**16.** *Residence premises* means:

- 1                   a. A one or two family dwelling, condominium, cooperative unit or  
2                   apartment that you own or reside in; or  
3                   b. That part of any other building where you reside;  
4                   and which is shown as a location in the Declarations.

5                   *Residence premises* also includes other structures and grounds at that  
6                   location.

7  
8                   **FIFTH AFFIRMATIVE DEFENSE**

9                   68. The Bankers Standard homeowner's policy issued to Plaintiffs provides  
10                  in part:

11  
12                  **PROPERTY CONDITIONS...**

13                  6. **Other Insurance And Service Agreement**

14                         If a loss covered by this policy is also covered by:

- 15                         a. Other insurance, we will pay only the  
16                         proportion of the loss that the limit of insurance that applies  
17                         under this policy bears to the total amount of insurance  
18                         covering the loss...

19                         **SIXTH AFFIRMATIVE DEFENSE**

20                  69. The Bankers Standard homeowner's policy issued to  
21                  Plaintiffs provides in part:

22                  **PROPERTY CONDITIONS...**

23                  1. **Duties After Loss**

24                         In case of a loss covered by this policy, we have no duty to  
25                         provide coverage under this policy unless there has been full  
26                         compliance with the following duties by an *insured person*  
27                         or their representative:

- 28                         a. Give prompt notice to us or our agent;

- 1 b. Notify the police in case of loss by theft or vandalism;  
2  
3 c. Notify the appropriate law enforcement agency in  
4 case of loss as provided for in Extra Benefits **12.**  
5 Identity Fraud Expenses and **13.** Kidnap Expenses;  
6  
7 d. Notify the appropriate financial institution in case of  
8 loss as provided for in Extra Benefit **14.** Credit Cards,  
9 Fund Transfer Cards, Forgery, Counterfeit Money and  
10 Home Banking;  
11  
12 e. Protect the property from further damage. If repairs  
13 to the property are required, an *insured person* must:  
14  
15 (1) Make reasonable and necessary repairs to protect  
16 the property; and  
17  
18 (2) Keep an accurate record of repair expenses;  
19  
20 f. Cooperate with us in the investigation of a claim;  
21  
22 g. Prepare an inventory of damaged personal property  
23 showing the quantity, description and amount of loss.  
24 Attach all bills, receipts and related documents that  
25 justify the figures in the inventory;  
26  
27 h. As often as we reasonably require:  
28  
29 (1) Show the damaged property;  
30  
31 (2) Provide us with records and documents we request  
32 and permit us to make copies; and  
33  
34 (3) Submit to examination under oath, while not in the  
35 presence of another *insured person*;  
36  
37 i. Send to us, within 60 days after our request, a signed,  
38 sworn proof of loss which sets forth, to the best of an  
39 *insured person's* knowledge and belief:  
40  
41 (1) The time and cause of loss;

- 1 (2) The interests of all *insured persons* and all others  
2 in the property involved and all liens on the property;
- 3 (3) Other insurance which may cover this loss;
- 4 (4) Changes in title or occupancy of the property  
5 during the term of the policy;
- 6 (5) Specifications of damaged buildings and detailed  
7 repair estimates;
- 8 (6) The inventory of damaged personal property  
9 described in **g.** above;
- 10 (7) Receipts for additional living expenses incurred  
11 and records that support the fair rental value loss;
- 12 (8) Receipts, bills or other records that support your  
13 claim for *identity fraud expenses* or *kidnap* and  
*ransom expenses*; and
- 14 (9) Evidence or affidavit that supports a claim under  
15 Extra Benefit **14. Credit Cards, Fund Transfer Cards,**  
16 **Forgery, Counterfeit Money And Home Banking,**  
17 stating the amount and cause of loss.

18 70. Additionally, the Bankers Standard valuables policy issued to  
19 Plaintiffs provides in part:

20 **PART: TERMS AND CONDITIONS**

21 ...

22 **WHAT TO DO AFTER A LOSS**

23 This section explains the steps *you* must take after a loss, in order  
24 for *us* to help you. If *you* don't take these steps, *we* may not be able  
25 to pay any money.

26 • **Step One: Notify Us**

27 *You* must notify *us* or *our* agent as soon as possible...

## **In Case of Theft**

If the loss involved theft, *you* must notify the police as soon as possible.

- **Step Two: Submit All Claims**

For *us* to pay under *your* Valuables Policy, *you* must submit a formal claim. Send *us* a signed, sworn proof of loss containing the information *we* request to investigate the claim. *You* must do this within 60 days after *our* request. *We* will supply *you* with the necessary forms.

...

- **Step Three: Cooperate with Our Investigation**

*You* and anyone else who is making a claim must help *us* investigate and settle it.

### **1. Help Us Substantiate Your Claim**

Anyone seeking damages must take these steps to help *us* investigate and prove the claim:

**(a) Provide records, documents and proofs.** An *insured person* must provide any records, documents or proofs *we* ask for, and allow *us* to make copies of them.

**(b) Exhibit damaged property.** An *insured person* must allow *us* to inspect and appraise damaged property before it is repaired or discarded.

**(c) Swear under oath.** An *insured person* must be willing to submit to examination under oath and sign his or her testimony.

## **SEVENTH AFFIRMATIVE DEFENSE**

71. Plaintiffs' claim for punitive damages seeks relief which will violate the U.S. Constitution and the California Constitution to the extent that the imposition of punitive or exemplary damages may impair the obligation of contracts, in violation of Article I, Section 10, of the United State Constitution; it violates the commerce clause of the United States Constitution; constitutes a deprivation of property without due process, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 7, of the California State Constitution; constitutes

1 excessive fines in violation of the Eighth Amendment of the United States  
2 Constitution and Article I, Section 17, of the California State Constitution; and will  
3 require the application of vague and ambiguous standards.

4 **EIGHTH AFFIRMATIVE DEFENSE**

5 72. At all times relevant hereto, Defendant acted reasonably and in good faith  
6 in all dealings with the Plaintiffs and the claims at issue.

7 **NINTH AFFIRMATIVE DEFENSE**

8 73. Defendant specifically reserves the right to assert additional affirmative  
9 defenses, including defenses based on the provisions of the insurance policies, as facts  
10 develop in the investigation and/or discovery as allowed and permitted under the  
11 United States and California law.

12  
13 **PRAYER FOR RELIEF**

14 WHEREFORE, Bankers Standard prays for judgment as follows:

- 15 1. An Order denying all relief requested by Plaintiffs and dismissing  
16 Plaintiffs' claims with prejudice;
- 17 2. An award to Bankers Standard of its costs and expenses in the defense of  
18 this action, including a reasonable award of attorneys' fees associated with this action  
19 as permitted by contract, statute, equity, and/or other applicable authority, including  
20 but not limited to Rule of the applicable Rules of Civil Procedure; and
- 21 3. Such other and further relief as the Court deems just and proper.

22  
23 Dated: December 9, 2013

COZEN O'CONNOR

24  
25 By: /S/ Joann Selleck

26 JOANN SELLECK  
27 Attorneys for Defendant  
28 BANKERS STANDARD INSURANCE  
COMPANY

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COZEN O'CONNOR

By: /S/ Joann Selleck  
JOANN SELLECK  
Attorneys for Defendant  
BANKERS STANDARD INSURANCE  
COMPANY